IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 876 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITU @ JITENDRA S. SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 876 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AD OZA, LD.GOVT. PLEADER for Respondent No.1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by

the detaining authority, by its order dated 31.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as an "immoral traffic offender" within the meaning of Section 2(g) of the Act. Along with the order, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about one case registered against the petitioner. The said case is registered under Secs.3, 4, 5, 6 & 9 of the Immoral Traffic (Prevention) Act, 1956. The detaining authority has also relied on the statements of two witnesses, whose names have not been given to the petitioner, and in view of that, the detaining authority has detained the petitioner under PASA.

3. The said order of detention is challenged by the petitioner in this petition on the ground that there is only one criminal case registered against the petitioner and, therefore, it cannot be said that the petitioner is a habitual offender and unless a person is a habitual offender, he cannot be detained under PASA. He has relied upon Section 2(g) of the Gujarat Prevention of Anti-Social Activities Act, which reads as under:

"sec.2 Definition :- In this Act, unless the context otherwise requires

xxx xxx xxx

(g)"immoral traffic offender" means a person who habitually commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956);

... ..."

(Emphasis supplied)

4. It is, no doubt, true that there is only one solitary case registered against the petitioner under the Immoral Traffic (Prevention) Act, 1956, and, therefore, it cannot be said that the petitioner is a "habitual offender". It is further submitted that regarding the two statements of witnesses, whose names have not been disclosed to the petitioner, it is argued by the learned advocate for the petitioner that the authority has not properly exercised the powers under sec.9(2) of the Act. He has relied upon the decision of this Court in the case of Kishor Naginbhai Parmar v. State of Gujarat and others reported in 2000(4) GLR 3236 particularly para 14 which reads as under:

"para.14 In this view of the matter, the order of

> the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of proper exercise of powers under Sec.9(2) of the PASA Act and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition."

5. Considering the fact that only a solitary case is registered against the petitioner, it cannot be said that he is a "habitual offender", who is dealing in such illegal activities. Of course, it is always open for the police to prevent such activity by taking preventive measures but so far as the impugned order is concerned, it cannot be said that the petitioner is a habitual offender, as there is nothing to show that any other cases are registered against the petitioner. Accordingly, this petition is required to be allowed on this ground.

6. For the foregoing reasons, this petition is allowed. The order of detention dated 31.12.2003 is quashed and set aside. The detenu, Jitu @ Jitendra Sureshbhai Shah is ordered to be set at liberty forthwith, if he is not required in connection with any other case.

9. At this stage, Mr.Prajapati, learned advocate for the petitioner, after taking instructions from his client has voluntarily made a statement that the petitioner will not enter into Baroda City upto 31st October, 2004, and he will stay with his brother at Dabhoi, and he will also furnish the address of Dabhoi where he is staying, as, according to the condition of bail order, such address is to be given both to the police as well as to the court. However, as per the condition of the order of bail, the petitioner will be required to mark presence for every month at Baroda City Police Station. In view of that condition, naturally the petitioner will be entitled to enter Baroda City to mark his presence at Baroda City Police Station and also for attending court proceedings during the aforesaid period i.e. upto 31st October,

2004. The Concerned Police Officer may also monitor this aspect so that the aforesaid statement can be effectively taken care of by the authorities. Rule is made absolute.

(P.B. Majmudar, J.)

syed/